

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 07-2189

ORDER

The relief set forth on the following pages, for a total of 6 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT**  
**09/06/2007**



Entered: 09/06/2007

  
US Bankruptcy Court Judge  
District of South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Joice Gibson Stewart,

Debtor.

C/A No. 07-02189-HB

Chapter 7

**ORDER**

This matter is before the Court upon debtor's Amended Motion to Avoid Security Interest pursuant to 11 U.S.C. § 522(f)(1)(B), and Creditor 1st Franklin Financial Corporation's Response thereto. 1st Franklin opposes debtor's Amended Motion asserting that a utility building in which it has a nonpossessory, non-purchase money security interest does not constitute "household goods" under 11 U.S.C. § 522(f)(4)(A). Having considered the arguments of the parties, the Court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Debtor granted 1st Franklin a nonpossessory, nonpurchase-money security interest in the following items of personal property (hereinafter "collateral"):

- (1) Snapper riding mower
- (1) Magnavox TV/DVD
- (2) stereo systems
- (1) utility building
- (1) gas grill
- (1) HP computer

2. Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code on April 26, 2007.

3. On debtor's Schedule C, she claimed a one thousand five hundred dollar (\$1,500.00) exemption for her interest in "assorted used household goods and furnishings

jointly owned with Spouse,” based on S. C. Code Ann. § 15-41-30(3) (2006). On Schedule D, debtor listed the amount of 1st Franklin’s claim as \$3,906.00 and the value of the property subject to its lien as \$1,500.00.

4. On June 1, 2007, debtor moved to avoid 1st Franklin’s lien on the collateral pursuant to 11 U.S.C. § 522(f)(1)(B).

5. 1st Franklin initially objected to the avoidance of its lien as to all but one television and the computer on the grounds that the other items were not “household goods” subject to lien avoidance pursuant to § 522(f)(4)(A).

6. At the hearing on debtor’s motion, the parties stated that they had reached an agreement as to lien avoidance regarding all items of collateral with the exception of the utility building.

7. The evidence presented regarding the utility building consisted of photographs of the utility building and a proffer of testimony that the building is situated behind debtor’s house, is not affixed to the land and is used by debtor to store miscellaneous household goods. 1st Franklin accepted the proffer of testimony.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

As this Court previously recognized in In re Mundy, No. 05-14207-W (D.S.C. Jan. 10, 2006), § 522(f)(1) essentially requires a two-part test to determine if a nonpossessory, nonpurchase-money security interest is avoidable by a debtor: (1) the debtor must be entitled to claim an exemption in the property under federal or state law, and (2) the security interest must be in “household goods,” or any of the other items enumerated in § 522(f)(1)(B). Id., slip op. at 4.

With regard to the first part of the test, since South Carolina opted out of the federal exemption scheme of § 522(d), state law controls whether debtor is entitled to exempt the collateral. 11 U.S.C. § 522(b); S. C. Code Ann. § 15-41-35 (2006); In re Mundy, slip op. at 4. As to the second part of the test, even if the collateral is entitled to exemption under state law, for the security interest to be avoidable, the collateral must also fall into one of the categories listed in § 522(f)(1)(B). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 added to the Code a list of what constitutes “household goods” as that term is used in § 522(f)(1)(B):

(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term “household good” means—

- (i) clothing;
- (ii) furniture;
- (iii) appliances;
- (iv) 1 radio;
- (v) 1 television;
- (vi) 1 VCR;
- (vii) linens;
- (ix) crockery;
- (x) kitchenware;
- (xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii) medical equipment and supplies;
- (xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv) 1 personal computer and related equipment.

§ 522(f)(4)(A). BAPCPA also added a list of items which are not “household goods”:

(B) The term “household goods” does not include—

- (i) works of art (unless by or of the debtor, or any relative of the debtor);
- (ii) electronic entertainment equipment with a fair market value of more than \$500 in the aggregate (except 1 television, 1 radio, and 1 VCR);
- (iii) items acquired as antiques with a fair market value of more than \$500 in the aggregate;

- (iv) jewelry with a fair market value of more than \$500 in the aggregate (except wedding rings); and
- (v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

§ 522(f)(4)(B).

Debtor seeks to avoid the lien created by Creditor's nonpossessory, nonpurchase-money security interest in a utility building on the grounds that the utility building is "household goods" exempt under state law and avoidable under § 522(f)(1)(B)(i). 1st Franklin asserts that a utility building does not qualify as "household goods" subject to lien avoidance under the new definition in § 522(f)(4).

The Court does not need to reach the issue of whether the utility building is exempt as "household goods" under state law in order to decide this matter. Rather, the present motion can be decided on the second arm of the § 522(f)(1) test. A utility building does not fall within the definition of "household goods" in § 522(f)(4)(A). The only possible category in which it could possibly fit would be "appliances." The Merriam-Webster Online Dictionary defines "appliance" as "an instrument or device designed for a particular use or function <an orthodontic *appliance*>; specifically: a household or office device (as a stove, fan, or refrigerator) operated by gas or electric current." Merriam-Webster Online Dictionary, <http://www.m-w.com> (last visited Sept. 5, 2007). The American Heritage Dictionary defines an appliance as "a device or instrument, especially one operated by electricity and designed for household use." American Heritage Dictionary 33 (2d College ed. 1983). The Court can find no basis on which to conclude that a utility building is an "appliance," nor does it fit within any other category in the "household goods" definition. Debtor's only assertion is that the utility

building is a household good because it is used to store household goods. This fact does not bring it within the scope of § 522(f)(4)(A).

Based on the above, the Court denies debtor's Amended Motion to Avoid Security Interest as to the utility building.

IT IS SO ORDERED.